

REMARKS

By this Amendment, claims 15-21 are added. Thus, claims 1-8 and 15-21 are pending in this application. Support for new claims 15-21 may be found in the original claims. That is, claim 15 incorporates features from claim 1 and claim 4 and claim 21 incorporates features from claim 8 and claim 4. No new matter is added. Applicant respectfully requests reconsideration of the pending claims at least in light of the following remarks.

Applicant appreciates the courtesies shown to Applicant's representative by Examiners Fidler and Feggins in the April 20 personal interview. Applicant incorporates a separate record of the substance of the interview into the following remarks.

The Office Action rejects claims 1-8 under 35 U.S.C. §102(b) over U.S. Patent No. 6,536,880 to Takagi. Applicant respectfully traverses the rejection.

In particular, as discussed during the personal interview, Takagi at least fails to disclose "one or more sintered members of substantially the same residual stress characteristics as the individual electrodes," as recited in claims 1 and 8. The Office Action alleges that because the dummy electrodes 36' of Takagi "are made of the same material and sintered at the same time" as the drive electrodes 36, "they share substantially equal residual stress characteristics" (Office Action, p. 3).

However, in order to ensure that sintered members have the substantially same residual stress characteristics as individual electrodes it is not enough that they are the same material and formed at the same time. They must also, for example, be substantially the same shape, substantially the same size, and/or in substantially the same pattern (see, e.g., paragraphs [0061], [0065], [0074] and [0078] of Applicant's specification).

As shown in FIG 2 of Takagi, although the dummy electrodes 36' and the drive electrodes 36 might be considered rectangular, the respective rectangles are substantially differently shaped and substantially differently sized (i.e., the drive electrodes 36 are almost

four times as long and half as wide as the dummy electrodes 36'), and are in a substantially different pattern. Thus, the dummy electrodes 36' of Takagi cannot have substantially the same residual stress characteristics as the drive electrodes 36, even if they are made of the same material at the same time.

Because Takagi fails to disclose "one or more sintered members of substantially the same residual stress characteristics as the individual electrodes," claims 1 and 8 are patentable over Takagi. Further, claims 2-7 are patentable for at least the reasons that claim 1 is patentable, as well as for the additional features that they recite. Applicants respectfully request withdrawal of the rejection.

Furthermore, with respect to new claims 15-21, Takagi at least fails to disclose that "the sintered members and the individual electrodes have substantially the same shape and the same size," as recited in claims 15 and 21. In rejecting claim 4, the Office Action asserts that Takagi discloses that the dummy pattern electrodes 36' (alleged to be equivalent to the claimed sintered members) and the drive electrodes 36 are both the same shape (i.e., rectangular) and the same thickness (Office Action, p. 3). However, this reasoning is flawed for at least three reasons.

First, thickness is a dimension not a size. Second, as shown in FIG. 6 of Takagi, even if the dummy electrodes 36' and the drive electrodes 36 could be considered the same thickness, the drive electrodes 36 are significantly longer and cover more area than the dummy electrodes 36'. Thus, they are not the same size. Third, there is no disclosure in Takagi that the dummy electrodes 36' and the drive electrodes 36 are substantially the same size.

Applicants note that this feature is beneficial to claims 15 and 21 because, for example, it ensures that the sintered members have substantially the same residual stress

characteristics as the individual electrodes (see, e.g., paragraph [0078] of Applicants' specification).

Because Takagi fails to disclose that "the sintered members and the individual electrodes have substantially the same shape and the same size," new claims 15 and 21 are also patentable over Takagi.

During the personal interview, Examiners Fidler and Feggins responded to the above arguments by alleging that they could interpret the term "substantially" broadly enough to encompass any variation in residual stress characteristics, shape, and size. Thus, Fidler and Feggins alleged that, in spite of the fact that the drive electrodes 36 of Takagi are almost four times as long and half as wide as the dummy electrodes 36' of Takagi, the drive electrodes would still have "substantially" the same residual stress characteristics, shape, and size. This position, however, is directly contrary to the Federal Circuit's interpretation of the term "substantially."

Specifically, the Federal Circuit has recently and repeatedly held that, in this context, the term "substantially" is a commonly used definite term of approximation allowing minor variations that avoid strict numerical equality (see, e.g., *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1120 (Fed. Cir. 2002), and *Cordis Corp. v. Medtronic Ave, Inc.*, 339 F.3d 1352, 1360 (Fed. Cir. 2003)). Because it is well settled that the term "substantially" only allows for minor variations, it cannot be broadly read to encompass the variation shown in Takagi in which the drive electrodes 36 are almost four times as long and half as wide as the dummy electrodes 36'.

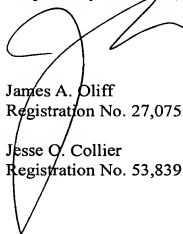
In fact, in *Cordis*, the Federal Circuit found that an expanded metal sleeve having bridge portions several times as thick as the strands had an irregular and variable configuration that was "the antithesis of 'substantially uniform thickness'" (339 F.3d at 1361, emphasis added). There can be no question that the factual situation in *Cordis* applies to the

disclosure of Takagi, in which the drive electrodes 36 are almost four times as long and half as wide as the dummy electrodes 36'. Thus, the drive electrode 36 and dummy electrode 36' of Takagi cannot reasonably be considered to have "substantially" the same residual stress characteristics, shape, and size.

In view of at least the foregoing, Applicants respectfully submit that this application is in condition for allowance. Applicants earnestly solicit favorable reconsideration and prompt allowance of the pending claims.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, Applicants invite the Examiner to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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